

**Agreement
for the 2019 July 4th Celebration Event
Between the
City of Columbia, Missouri
and
Columbia Cemetery Association**

THIS AGREEMENT is entered into on the date of the last signatory noted below (the "Effective Date"), between the City of Columbia, Missouri, a municipal corporation (hereinafter "City") and Columbia Cemetery Association, a benevolent corporation formed by act of the Missouri General Assembly (hereinafter "Cemetery") for the City of Columbia's 2019 July 4th Celebration Event. City and Cemetery are each individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the City desires to host a community fireworks display and event on July 4, 2019 (hereinafter "Event");

WHEREAS, Cemetery owns property within the fall zone of the fireworks display or within the footprint of the Event (hereinafter "Property").

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

1. **Purpose.** The purpose of this Agreement is to allow City to host the Event on the Property and further delineate the responsibilities of the Parties with regard to the Event.
2. **Property.** Cemetery owns or leases property located at: 30 East Broadway, Columbia, Missouri. Cemetery agrees to make available facilities on the Property as specified above including, but not limited to, grounds and roads, etc. for the Event. Cemetery agrees to make available the Property for the Event at no cost to the City.
3. **Event Map.** The Event Map is contained in Exhibit A.
4. **Relationship of the Parties.** The Parties hereby agree, stipulate and recognize that in the entering of this agreement and lease, the Parties are not in any way partners, co-partners, or in any way jointly interested in any mutual enterprise.
5. **Responsibilities of the Parties.**
 - a. **City's Rights and Responsibilities.** City shall provide:
 - i. Portable toilets, trash cans and trash removal at the locations set forth in the special event permit.

- ii. Set up of Cemetery's Property can begin on July 2 to allow City to place portable toilets, trash cans, barricades, temporary fencing, and or other supplies or equipment needed for the event.
 - iii. Clean up of Cemetery's Property shall conclude by the close of business on July 5, 2019, unless otherwise extended by agreement of the parties.
 - iv. City may include Cemetery's name, image and/or marks in the advertising of the Event, subject to Cemetery's approval as provided in paragraph 5.b.iii. below.
 - v. City, at City's sole expense, shall obtain all necessary permits for City's Event.
- b. **Cemetery's Rights and Responsibilities.** Cemetery shall:
- i. Permit City to use the cemetery property as a safety zone for the fireworks at the locations set forth in Exhibit A.
 - ii. Allow City access to the Property beginning on July 2, 2019, to set up for the Event.
 - iii. Subject to determination by Cemetery's Board of Directors that proposed Event advertising involving the use of Cemetery's name, image and/or marks is appropriate and in the best interest of Cemetery, grant City approval of such Event advertising, provided that such approval shall not be unreasonably withheld.
 - iv. Should Cemetery choose to hold an event at the same time as the City's Event, Cemetery, at Cemetery's sole expense, shall be responsible for obtaining all necessary permits for Cemetery's event.
- c. **Event Permit Requirements.** The Parties shall comply with all requirements set forth in the special event permit(s).
6. **Term.** This Agreement will commence on the Effective Date and shall conclude on July 30, 2019.
7. **Termination.**
- a. **Termination by Convenience.** City may terminate this Agreement for its convenience.
 - b. **Termination by Default.** Should City be in default of any provision of this Agreement, Cemetery may immediately terminate this Agreement.
8. **Clean up.** City shall not injure or mar, or in any manner deface said premises. City covenants and agrees that it will, upon the termination of the terms hereof as herein provided, surrender the premises in as good order and condition as existed at the commencement of the term hereof, acts of God and ordinary wear and tear excepted. For the purpose of this paragraph, the term "ordinary wear and tear" is defined as wear and tear that Cemetery would have experienced during the time frame of the Event if the Event had not directly involved the use of Cemetery's Property and if the Event had not effectively invited the public to enter the Cemetery's Property to view the Event.

9. **Insurance.** City shall carry during the performance of this Agreement and at City's own expense, commercial General Liability (comparable to Comprehensive General Liability Insurance) against all claims or suits with the following minimum limit of liability:

\$3,000,000.00 combined single limit for bodily injury and property damage, per occurrence and an aggregate limit of \$10,000,000.00.

The insurance policy shall name Cemetery as an "additional insured". In addition to the above coverage, City shall provide for Workers' Compensation coverage at statutory limits and Employers' liability coverage with a minimum limit of \$1,000,000.00 per occurrence and aggregate. The City's Certificate of Insurance is contained in Exhibit B.

10. **Hold Harmless.** Without waiving sovereign immunity, City agrees to indemnify, protect, defend and hold harmless Cemetery and its officers and agents, and employees from any and all liability including claims, demands, losses, costs, damages and expenses of every kind and description or damage to persons or property arising out of City's use of the Property for this Event. This provision does not, however, require City to indemnify, hold harmless, or defend Cemetery from Cemetery's own negligence.

11. **No Assignment.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

12. **Notices.** Any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to City:

City of Columbia
Parks and Recreation Department
P.O. Box 6015
Columbia, MO 65205-6015
ATTN: Director

If to Cemetery:

The Columbia Cemetery Association
30 East Broadway
Columbia, Missouri 65203

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

13. **No Third-Party Beneficiary.** No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under this Agreement.

14. **Amendment.** No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
15. **Governing Law and Venue.** This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.
16. **General Laws.** The Parties shall comply with all federal, state, and local laws, rules, regulations, and ordinances.
17. **Nature of City's Obligations.** All obligations of the City under this Agreement, which require the expenditure of funds, are conditional upon the availability of funds budgeted and appropriated for that purpose.
18. **No Waiver of Immunities.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.
19. **Contract Documents.** This Agreement includes the following exhibits, which are incorporated herein by reference:
- | Exhibit | Description |
|---------|--------------------------|
| A | Event Map |
| B | Certificate of Insurance |
- In the event of a conflict between the terms of an exhibit and the terms of this Agreement, the terms of this Agreement controls.
20. **Entire Agreement.** This Agreement represents the entire and integrated Agreement between Cemetery and City relative to the Event. All previous or contemporaneous agreements, representations, promises and conditions relating to the Event described herein are superseded.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year of the last signatory noted below.

CITY OF COLUMBIA, MISSOURI

By: _____
City Manager

Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor *NT*

COLUMBIA CEMETERY ASSOCIATION

By: David P. Sapp

Name and Title: DAVID P. SAPP, President

Date: 2/18/2019

ATTEST:

Tanja R. Patton

Name and Title: Tanja R. Patton, Supt

Exhibit A



Fire in the Sky 2019

- First Aid
- Generator
- Trash/Recycling
- Dumpster
- Sanitation Station
- Info Station
- Port-a-lets
- Bike Racks
- Staging Area 73
- JULY 4 8:30 PM BARRICADE
- JULY 4 5:00 PM BARRICADE
- JULY 4 3:30 PM BARRICADE
- JULY 4 NOON BARRICADE
- JULY 3 8:00 PM BARRICADE
- JULY 3 BIKE RACK BARRICADE
- JULY 3 CHANELIZERS
- JULY 2 FIREWORKS AREA

STATES SELF-INSURERS RISK RETENTION GROUP, INC.
222South Ninth St Suite 2700
Minneapolis, MN 55402-3332
(612) 766-3000

Exhibit B

CERTIFICATE OF INSURANCE

Insured: City of Columbia, MO PO Box 6015 Columbia MO 65205	This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policy(ies) below. This certificate of insurance does not constitute a contract between the issuing insurer, authorized representative or producer, and the certificate holder.
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IMPORTANT: If the certificate holder is an Additional Insured, the policy(ies) must be endorsed. If Subrogation is waived, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Coverages:

This is to certify that the policy(ies) of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policy(ies) described herein is subject to all the terms, exclusions, and conditions of such policy(ies).
 Limits shown may have been reduced by paid claims.

Type of Insurance:	Policy Number	Effective Date	Expiration Date	Limits	
				Occurrence	Aggregate
Public Entity Excess Liability including Error or Omission Liability Coverage.	3000030-2	10/1/2018	10/1/2019	\$3,000,000	\$10,000,000
Retroactive Date: Occurrence Form Policy					

Description of Operations/Locations/Vehicles/Special Terms:
 Certificate holder is an additional insured with regards to July 4th Celebration Event.

Certificate Holder(s): Columbia Cemetery Association	CANCELLATION: Should the above described policy be cancelled before the expiration date thereof, notice will be delivered according to policy provisions.
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Self-Insured Retention: \$500,000	Authorized Representative: <div style="text-align: center;">  <hr style="width: 100%;"/> Signature </div> <div style="text-align: right;"> 5/22/2019 <hr style="width: 100%;"/> Date </div>
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